IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 208/2005

M/s N. L. P. Organics Pvt. Ltd. & Ors
Versus
Rajasthan Financial Corporation.

Date of Judgment: 21st August, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. Paras Kuhad with Mr. Pancham Surana for the Appellant
Mr. A. K. Sharma for the Respondent.

(Per R. S. Chauhan) J:

The repayment of loan of Rs. 1,36,04,491/- by the Appellants, M/s N. L. P. Organics Pvt. Ltd. to the Rajasthan Financial Corporation (henceforth to be referred to as the Respondent, for short) along with an interest of 15% per annum forms the background of this appeal. The Appellants are challenging the Order dated 23-11-2004 passed by the Additional District Judge No. 1, Alwar where by the Learned Judge has allowed the application filed by the Respondent under Section 31 of the State Financial Corporation Act, 1951 (henceforth to be referred to as the Act of 1951, for short) and has directed the Appellants to pay the above mentioned amount at the abovementioned rate of interest.

The Appellants applied for a loan of Rs. 40.28 Lakhs (revised to Rs. 30.90 Lakhs) to the Respondent. Vide Order dated 13-2-87, the Respondent sanctioned a loan of only Rs. 30,90,000/- for the industrial project at Bhiwadi for

the manufacturing of drugs and drug formulation. It was agreed between the Respondent and the Appellant that the loan shall be repayable in five years in quarterly installments. As far as the interest rate was concerned, it was agreed that interest should be 5% above the Bank rate prevailing from time to time subject to a minimum of 15%. Pursuant to grant of loan, documents were executed, including the Deed of Hypothecation by which movable properties of the Company were hypothecated with the Respondent. A letter of trust, an affidavit, power of attorney and an undertaking were also prepared. It is also alleged that the Appellant mortgaged Plot No. A-590-B, Bhiwadi Industrial Area, Bhiwadi by way of equitable mortgage in favor of the Respondent. It was further alleged that the Appellant No. 2,3, and 4 stood as guarantor for the repayment of the loan amount. Accordingly, Guarantee Deed dated 8-7-1987 was also executed. The Appellant also applied for a loan of Rs. 6,40,000/- for which similar documents were executed. However, against a loan of Rs. 37,30,000/- the Appellants availed of only Rs. 32,33,000/- and did not avail of Rs. 4,97,000/-. On 5-9-1987, a tripartite agreement was entered between the Appellant and the Respondent and the Indian Bank. It was agreed in between the parties that there would be first charge of the Respondent on the properties of the Company and second charge would be of the Bank. The Indian Bank gave loan facility of working capital of Rs. 1,25,000 enhanced to Rs. 46,50,000/-. However, allegedly, the Appellant failed to repay the loan as stipulated by the contract between the parties. On 20-1-1999, the Respondent issued a notice to the Appellant under Section 30 of the Act of 1951 and demanded the repayment of Rs. 1,08,06,174/-. However, the Appellant still did not repay the loan. Thus,

through another notice dated 15-12-1999, the Respondent demanded the repayment of the loan amount. But, the Appellant denied the liability and desired for reschedule of payment. Although the Respondent agreed for the reschedulement of payment, the Appellant still failed to repay the loan. Hence, the Respondent filed an application under Section 31 (1) (a) (aa) of the Act of 1951. Since the Appellant No. 2,3, and 4 were the guarantors for the repayment of the loan, they too were impleaded as parties in the said application.

The Appellants No. 1 and 2 contested the application and claimed that against a loan of Rs. 31,34,000/-, they had already paid Rs. 42,13,695/- and another sum of Rs. 5,25,000/- was paid in the years 1990-2000. They denied the receipt of notice under Section 29 of the Act of 1951. They further denied the execution of guarantee deed and of the other loan documents. According to the Appellants, the Respondent took signatures on certain printed forms and then created the hypothecation deed, the mortgage contract and other documents.

Vide Order dated 23-11-2004, the Learned Judge allowed the said application and directed the Appellant to pay a sum of Rs. 1,36,04,991/- to the Respondent along with an interest rate of 15% per annum. The said amount was to be paid within a period of two months, failing which Plot No. A-490-B situated in B-Industrial Area, Bhiwadi was to be auctioned and the amount recovered. The Court further directed the Appellants to refrain from alienating any movable or immovable property. Thus, the principal borrower and the guarantors have filed this appeal before this Court.

Mr. Paras Kuhad, the learned counsel for the Appellant has raised various contentions before this court: firstly, the Learned Judge has misunderstood the scope and ambit of Section 31 of the Act of 1951. An application under the said section is not a suit for money recovery. Instead, it is akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of a decree. Yet, the learned Judge has passed a money decree whereby the Appellants have been held to be jointly and severally liable to pay the sum along with the interest indicated in the judgment. Hence, he has gone ultra-vires his jurisdiction under Section 31 of the Act of 1951. Secondly, the jurisdiction of a court under Section 31 of the Act of 1951 is a limited one. It is limited by sub-section (1) and by sub-clauses (a), (aa), (b), and (c). According to the learned counsel, there is nothing to indicate any power to pass an order in the nature of decree for the payment of any amount. Thirdly, the Learned Judge did not have the power to determine the amount due and all the court could have done was to investigate the Respondent's claim. Section 32 (6) of the Act of 1951 clearly limits the jurisdiction of the court to "investigate" and not to "determine" the amount. The court can only investigate the correctness of the Statement of the Accounts submitted by the Respondent and has no jurisdiction to determine the amount due. The scope of investigation is restricted to the claim of the Respondent, which has to be established in order to entitle it to any of the reliefs mentioned in section 31 (1) of the Act of 1951. It is not open for the court to investigate the claims of the parties as regards damages. Fourthly, under Section 31 (1) (aa) the court can attach the security provided by the surety. But,

the court has no power to pass an order against the other personal properties of the surety. According to the learned counsel, the liability of the surety is co-extensive with that of the principal debtor. Thus, the Respondent should first proceed against the principal debtor and failing to get the decree satisfied, they could proceed against the guarantors. The reliefs which can be granted under Clause (a) and (aa) of Section 31 (1) of the Act of 1951, implies that the liability of the industrial concern has to be determined first in order to proceed against the surety. Of course, the court can only proceed in the manner contemplated in sections 31 and 32 of the Act of 1951. Lastly, there is no proof that the Appellants mortgaged the property to the Respondent. Hence, the application under Section 31 (1) of the Act of 1951 was not maintainable. In order to buttress his contentions, the learned counsel has relied upon Gujarat State Financial Corporation v Natson Manufacturing Pvt. Ltd ((1979) 1 SCC 193), A.P. State Financial Corporation v. Gar Re-rolling Mills and Ano. ((1994) 2 SCC 647).

Mr. A. K. Sharma, the learned counsel for the Respondent, has also raised a number of contentions before this court. Firstly, the respondent had filed a combined application under Section 31 (1) (a) and (aa) of the Act of 1951. The impugned Order is in consonance with the spirit and letter of Section 31 (1) (a) and (aa) of the Act of 1951.

Secondly, the learned counsel has denied the interpretation of Section 31 of the Act of 1951 as placed by the learned counsel for the Appellant. According to Mr. Sharma, the court is required to investigate the Respondent’s in order to

determine the extent of liability of the Appellant. The court has to determine how much security should be sold. For this limited purpose, the court has to determine the amount of liability in terms of money. Such determination with a direction to the Appellants to make payment of the determined amount within a specified period of time, in order to avoid the sale of mortgaged property or for the sureties to avoid the consequences of the enforcement of the determined liability of the industrial concern personally against them, cannot be termed as money decree.

Thirdly, under sub-section (8) of the Section 32 of the Act of 1951, an order of sale of property under section 32 is required to be carried into effect in the manner provided for sale of property and execution of a decree as if Financial Corporation was a decree holder.

Fourthly, the personal property of the surety is liable for attachment and sale under Section 31 (1) (aa) of the Act of 1951. The learned counsel referred to various documents and argued that the authenticity of these documents, such as the Hypothecation Deed, was not doubted. According to the counsel, it is against human conduct, especially for the businessman, to sign the “printed forms” without reading them. Once the Appellants signed these deeds and documents, they are bound by them. According to these documents, e.g. Exhibits 19 and 37, the Appellants have hypothecated both present and future properties. Hence, they cannot be permitted to wriggle out of their commitment.

In order to support his contentions, the learned counsel also relied on the case of Gujarat State Financial Corporation (supra) and on Andhra Pradesh State Financial Corporation (supra) and on Mangalal v M/s. Jaiswal Industries, Neemach (AIR 1989 SC 213), Maharashtra State Financial Corporation v Jaycee drugs and Pharmaceuticals Pvt. Ltd. and Ors. ((1991) 2SCC 637), and Hotel Seaking and Ors v Kerala Financial Corporation (JT 1999 (9) SC 440).

We have heard the learned counsels for the parties and have perused the impugned Order.

The nature of the application under Section 31 of the Act of 1951 calls for our attention. In order to understand its nature, it is imperative to first read the relevant provisions of Sections 31 and 32 of the Act of 1951.

Section 31 reads as under:

31. Special provisions for enforcement of claims by Financial Corporation -

(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof [or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment [then, without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act, 1882 (4 of 1882)] any officer of the Financial Corporation, generally or specially authorized by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:-

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the [Financial Corporation] as security for the loan or advance; or

[(aa) for enforcing the liability of any surety; or]

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(c) for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where as removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

Section 32 of the Act of 1951 reads as follows:

32. Procedure of district judge in respect of applications under section 31 -

(1) When the application is for the reliefs mentioned in clause (a) and (c) of sub-section (1) of section 31, the district judge shall pass an ad interim order attaching the security, or so much of the property of the industrial concern as would on being sold realize, or so much of the property of the industrial concern as would on being sold realize in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without an interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

[(1A) When the application is for the relief mentioned in clause (aa) of sub-section (1) of section 31, the district judge shall issue a notice calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced.]

(2) When the application is for the relief mentioned in clause (b) of sub-section (1) of section 31, the district judge shall grant an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plaint or equipment and issue a notice

calling upon the industrial concern to show case, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

(3) Before passing any order under sub-section (1) or sub-section (2) [or issuing a notice under sub-section (1A),] the district judge may, if he thinks fit, examine the officer making the application.

[(4) At the same time as he passes an order sub-section (1), the district judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed.

(4A) If no cause is shown on or before the date specified in the notice under sub-section (1A) the district judge shall forthwith order the enforcement of the liability of the surety.]

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the district judge shall forthwith make the ad interim order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (5 of 1908) insofar as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the district judge may -

(a) confirm the order of attachment and direct the sale of the attached property;

(b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(c) release the property from attachment;

(d) confirm or dissolve the injunction;

[(da) direct the enforcement of the liability of the surety or reject the claim made in this behalf; or]

(e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

Provided that when making an order under clause (c) [or making an order rejecting the claim to enforce the liability of the surety under clause (da) or making an order rejecting the claim to transfer the management of the industrial concern to the Financial Corporation under clause (e)], the district judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

Provided further that unless the Financial Corporation intimates to the district judge that it will not be appeal against any order relating any property from attachment [or rejecting the claim to enforce the liability of the surety or rejecting the claim to transfer the industrial concern to the Financial Corporation], such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure 1908 (5 of 1908) for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

[(8A) An order under this section transferring the management of an industrial concern to the Financial Corporation shall be carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the possession of immovable property or the delivery of movable property in execution of a degree, as if the Financial Corporation were the decree-holder.]

(9) Any party aggrieved by an order [under sub-section (4A), sub-section (5)] or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

[(11) The functions of a district judge under this section shall be exercised –

(a) in a presidency town, where there is a city civil court having jurisdiction, by a judge of that court and in the absence of such court, by the High Court; and

(b) elsewhere, also by an additional district judge [or by any judge of the principal court of civil jurisdiction].]

[(12) For the removal of doubts it is hereby declared that any court competent to grant an ad interim injunction under this section shall also have the power to appoint a Receiver and to exercise all the other powers incidental thereto.

The Hon'ble Supreme Court has interpreted these two provisions in number of cases. After the erudite elucidation by the Apex Court, the nature of application under Section 31 of the Act of 1951 is no longer res integra. Therefore, this court, may as well, fruitfully quote from the cases decided by the Hon'ble Supreme Court.

For the first time, the Apex Court tackled the issue in the case of Gujarat State Financial Corporation (supra). It held as under:

> An application for such a relief is certainly not a plaint in a suit for recovery of mortgage money by sale of mortgaged property…. It would be inappropriate to say that on an analogy an application under Section 31 (1) is something akin to a suit by a mortgagee to recover mortgage money by sale of mortgaged property. The distinguishing features noticeable between a suit for recovery of mortgage money by sale of mortgaged property and an application under Section 31 for one or more of the reliefs specified therein are that even if the Corporation as applicant so chooses, it cannot in the application, pray for a preliminary decree for accounts or a final decree for payment of money; nor can it seek to enforce any personal liability even if such one is incurred under the contract of mortgage. It can make an application for one of the three reliefs, none of which, if granted, results in a money decree, or decree for recovery of outstanding loan or

advance…. The Act clearly points to the conclusion that the proceedings are not in the nature of money recovery.

It further asked and held,

> What then is the nature of proceedings contemplated by Section 31 (1) if it is not a suit by the mortgagee for recovery of mortgage money by sale of mortgaged property. Section 31 would to some extent provide a clue to this question. On an application under Section 31 (1) being made it is obligatory upon the Court to make an interim order attaching the security with or without interim injunction restraining the industrial concern from transferring or removing its plant, machinery or equipment without the permission of the Board of the Corporation, if the relief claimed in the application is transfer of the management of the industrial concern to the Corporation it is obligatory upon the District Judge to grant an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

It concluded as under:

> The substantive relief in an application under Section 31 (1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree…. One has to look at the whole conspectus of provisions in Section 32 coupled with the nature of relief sought under Section 31 (1) and it becomes clear that special provision is made for certain types of reliefs that can be obtained by a Corporation by an application under Section 31 (1) which could not be styled as substantive relief for repayment of mortgage money by sale of mortgaged property.

Dealing with the power of the District Judge “to investigate” as contained in Section 32 (6) of the Act of 1951, it held as under:

> Sub-section (6) of Section 32 of the Act has to be read in the context in which it is placed. The claim of the Corporation is not the monetary claim to be investigated though it may become necessary to specify the figure for the purpose of determining how much of the security should be sold. But the investigation of the claim does not involve all the contentions that can be raised in a suit. The claim of the Corporation is that there is a breach of agreement or default in making repayment of loan or advance or installment thereof and therefore, the mortgaged property should be sold. It is not a money claim. The contest can be that the jurisdictional fact which enables the Corporation to seek the relief of sale of property is not available to it or no case is made out for transfer of

> management of the industrial concern. Sub-section (7) of Section 32 prescribes what reliefs can be given after investigation under sub-section (6) is made, and it clearly gives a clue to the nature of contest under sub-section (6). Sub-section (8) of Section 32 only prescribes the mode and method for executing the order of attachment or sale of property as provided in the Code of Civil Procedure. Sub-sections (6), (7), and (8) of Section 32 read together would give an opportunity to the industrial concern to appear and satisfy the District Judge that the situation envisaged by Section 31 (1) has not arisen and the relief should not be granted.

The Apex Court has reiterated the same view in the case of M/s Everest Industrial Corporation & Others v Gujarat State Financial Corporation ((1987) 3 SCC 597). Of course, in that case the Apex Court was faced with the issue whether an order under Section 34 of the Civil Procedure Code (henceforth, to be referred to as the Code, for short) could be passed in a proceeding under Section 31 (1) of the Act of 1951 or not? It held as under:

> Section 34 of the Code is not applicable to the case. The proceeding instituted under Section 31 (1) of the act is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. Therefore, no question of passing any order under Section 34 of the Code would arise since Section 34 of the Code would be applicable only at the stage of the passing of the decree and not to any stage posterior to the decree.

Sub-section (8) of Section 32 of the Act of 1951 creates a legal fiction and makes the Financial Corporation a decree-holder. In the case of Maganlal (supra) the Hon’ble Supreme Court was sized with the issue whether the right of redemption contained in Order 34 Rule 5 of the Code is attracted during the course of execution of an order of sale of mortgaged property passed under Section 32 of the State Financial Corporation Act, 1951? In this case, the Apex

Court again relied upon the case of Gujarat Financial Corporation (supra) and the case of M/s Everest Industrial Corporation (supra) and reaffirmed the same conclusions about the nature of proceeding under Section 31(1) of the Act of 1951. However, the Court further cautioned and held as under:

> Of course, in view of the limited scope of legal fiction as indicated above the provisions in the Code shall be applicable to an order of sale under the act only with regard to execution of that order as if it was a decree in a suit and the Financial Corporation was a decree holder and the debtor a judgment-debtor and this legal fiction will not be capable of being extended so as to treat an order of sale passed under the act to be a decree in a suit for any other purpose for instance applying S. 34 of the Code as was sought to be done in the case of M/s Everest Industrial Corporation (AIR 1987 SC 1950) (supra) nor could it be extended for treating the application under S. 31 (1) of the act as a plaint for purposes of payment of court fee as was sought to be done in the case of Gujarat State Financial Corporation (AIR 1978 SC 1765) (supra).

In the case of Maharashtra State Financial Corporation v Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and Others ((1991) 2 SCC 637) while dealing with the liability of a surety who has given only personal guarantee and not any property in security, the Hon'ble Supreme Court did hold that "the court's order of enforcement of liability of the surety will be in the nature of money decree." But the Apex Court also held as under:

> As seen above, sub-section (2) of Section 31 enjoins upon the Financial Corporation to state the "extent of the liability of the industrial concern" in the application to be made under sub-section (1) thereof. Since the liability of the surety is co-extensive the same shall, in the absence of anything contrary in the surety bound, be the liability of the surety also. In a case where there is any provision confining the liability of the surety, the extent of the liability to be shown in the application shall be such as is in conformity with the surety bond. When no cause is shown by the surety on being served with the show cause notice the order which will be passed under sub-section (4-A) of Section 32 would be for the enforcement against the surety of that liability which is stated in the

application. Where, however, cause has been shown by the surety the extent of his liability shall be determined as contemplated in sub-section (6) of Section 32 and its is the liability so determined which shall be enforced under clause (da) of sub-section (7) of Section 32. It does not require any elucidation that the extent of the liability referred to above will necessarily have to be in the very nature of things in terms of monetary value even though it may not be possible to call it a decree stricto sensu as defined in section 2 (2) of the Code of Civil Procedure. (Emphasis added).

Thus, even according to the case of Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and Others (supra) the order passed under Section 31 of the Act of 1951 is not a decree stricto sensu.

Hence, the principles, which emerge from the above case law, are as under:

1) The jurisdiction of the Court is a limited one while dealing with an application under Section 31 of the Act of 1951.

2) The Court can grant only those four reliefs enumerated in Section 31 (1) of the Act of 1951. These reliefs are, firstly, sale of property ledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; secondly, for enforcing the liability of any surety; thirdly, for transferring the management of the industrial concern to the Financial Corporation; or fourthly, an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises

of the industrial concern without the permission of the Board, where such removal is apprehended. It cannot travel beyond the reliefs contained in Section 31(1) of the Act of 1951. In case the court was to grant any other relief to the Financial Corporation, it would over step its jurisdiction.

3) An application for such a relief is not a plaint in a suit for recovery of mortgage money by sale of mortgaged property.

4) The Corporation as applicant can neither pray for a preliminary decree for accounts or a final decree for payment of money, nor can it seek to enforce any personal liability even if such one is incurred under the contract of mortgage. However, this is limited only to the principal borrower. In light of Section 31 (1) (aa) of the Act of 1951, and in light of the case of Jaycee Drugs and Pharmaceutical Pvt. Ltd. (supra) the liability of the surety would be both personal and would extend to his properties mentioned in the Surety bond.

5) But, the Corporation cannot pray for a decree for its outstanding dues.

6) The substantive relief in an application under Section 31 of the Act of 1951 is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree.

7) Only for sub-section (8) of Section 32 of the Act of 1951, a legal fiction has been created to treat the Financial Corporation as a decree-holder. But the said legal fiction is a limited one.

8) In case cause is shown by the industrial concern, the District Judge has the power to investigate the claim of the Financial Corporation. But, such investigation is restricted only to discovering if the situation has arisen so as to grant the relief under Section 31 (1) of the Act of 1951.

9) The claim of the Corporation is not the monetary claim to be investigated. But, it may become necessary to specify the figure for the purpose of determining how much of the security should be sold.

10) The benefit of Section 34 of the Code cannot be given while passing an order under Section 31 of the Act of 1951.

11) The right of redemption contained in Order 34 Rule 5 of the Code is available to the industrial concern and can be exercised by it even after passing of the order under Section 31 of the Act of 1951.

This court must now consider the nature of the application filed by the Respondent and the nature of relief granted by the learned Judge. After narrating

the facts of the case, the Respondent prayed for the following reliefs as under:

Quote the reliefs in Hindi itself.

The first relief is in terms of Section 31 (1) (a). The first part of the second relief is also in terms of Section 31 (1) (aa). But, the Respondent could not have asked for the second part of the second relief, namely, that “up to 1-10-2000, an amount of Rs. 1,36,04,991/- (One Crore, thirty-six lacs, four thousand, nine hundred and ninety-one rupees only) along with interest should be ordered to be paid.” As held in the case of Gujarat Financial Corporation (supra), “the Corporation cannot pray for a decree for its outstanding dues.” Hence, this part of the relief clause is not in terms of Section 31 (1) of the Act of 1951. The third relief is, of course, in terms of Section 31 (1) (c) of the Act of 1951. The fourth relief, asking for interest during the pendency of the case, is against Section 34 of the Civil Procedure Code. As held in the case of M/s Everest Industrial Corporation (supra) the benefit of Section 34 of the Code cannot be given to the Respondent.

Surprisingly, the learned Judge had not framed the issues in terms of the “investigation” permissible by Section 32 (6) of the Act of 1951. The issues framed by the learned Judge were as under:

Quote in Hindi itself.

According to the Gujarat Financial Corporation (supra) the scope of

“investigation” is limited to examine if the circumstances exist such as would entitle the Corporation for the relief under Section 31 (1) of the Act of 1951 or not. The issues, thus, should have been whether the industrial concern has failed to repay the loan amount in terms of the contract between the parties or not? This issue would be pertinent to decide as the Appellants were claiming that they had repaid the loan. Hence, according to them, the situation under Section 31 (1) had not arisen. Thus, according to the Appellants the relief under section 31 (1) (a), (aa), (b), and (c) could not be granted to the Respondent. But the learned Judge has framed the issue as though he were dealing with a suit for money recovery. Hence, the learned Judge has failed to frame the correct issues in this case.

The learned Judge has granted four reliefs to the Respondent. The four reliefs are as under:

Quote the reliefs in Hindi.

The first relief could not be granted under Section 31 (1) of the Act of 1951. For, the power to determine the exact amount owed to the Financial Corporation is not given under the said section. According to the Gujarat Financial Corporation (supra), “the claim of the Corporation is not the monetary claim to be investigated though it may become necessary to specify the figure for the purpose of determining how much of the security should be sold.” Hence, the learned Judge is not entitled to direct that “the Corporation is entitled to receive Rs. 1,36,04,991/- from the Respondents”. Such a direction can be passed in a money recovery suit, but not in an application filed under Section 31 (1) of the

Act of 1951.

Similarly, the learned Judge could not have granted the last part of the third relief. According to section 31 (1) (a) of the Act of 1951, the liability of the principal borrower is limited to the “property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance.” The said liability does not extend to other property owned by the principal borrower. Hence, the learned Judge could not have directed that “in case of the entire loan money can not be recovered after the auction of Plot No. A-590 B, Industrial Area, Bhiwadi, the rest of the amount should be realized from the other properties of the Respondents.” Such a direction could not have been given qua the principal borrower. Such a direction could be given only qua the sureties, namely Appellant Nos. 2, 3 and 4 before us. Hence, the learned Judge has over-stepped his jurisdiction vested in him by Section 31 (1) of the Act of 1951.

In the case of M/s O. K. Gaur & Company and Another v Rajasthan Finance Corporation, (2002 (1) RLW 556), this court had also held that a decree for money could not be passed under Section 31 of the Act of 1951. This court had remanded the case back to the trial court to be disposed of in accordance with the law.

But in the present case, the learned Judge has misappreciated the entire nature of the proceeding under Section 31 (1) of the Act of 1951; he has framed the issues incorrectly and consequently issued directions beyond his jurisdiction.

Hence, this court is constrained to quash and set aside the impugned judgment dated 23-11-2004. However, the Respondent is free to reinitiate the proceeding under Section 31 (1) of the Act of 1951. In case it does so, then the trial court is directed to decide the case within a period of six months from the date of filing of the application under Section 31 (1) of the Act of 1951. The parties are directed to cooperate with the trial court for getting the case adjudicated within the stipulated period. While deciding the case, the trial court is directed to keep the principles, as stated above, in mind.

With these observations, this appeal is allowed.

(R. S. Chauhan) J.